

RENZ D. JENNINGS  
CHAIRMAN

MARCIA WEEKS  
COMMISSIONER

CARL J. KUNASEK  
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

DATE: AUGUST 2, 1996

DOCKET NO: U-2752-96-363

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Scott S. Wakefield. The recommendation has been filed in the form of an Opinion and Order on:

MFS INTELENET OF ARIZONA, INC. (CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 5:00 p.m. on or before:

AUGUST 12, 1996

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 20, 1996 and AUGUST 21, 1996

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

  
James Matthews  
EXECUTIVE SECRETARY

JM  
Enc.  
cc: ALL PARTIES

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 RENZ D. JENNINGS

CHAIRMAN

3 MARCIA WEEKS

COMMISSIONER

4 CARL J. KUNASEK

COMMISSIONER

5  
6 IN THE MATTER OF THE APPLICATION OF )  
MFS INTELENET OF ARIZONA, INC. FOR A )  
7 CERTIFICATE OF CONVENIENCE AND )  
NECESSITY TO PROVIDE COMPETITIVE )  
8 TELECOMMUNICATIONS SERVICES )  
WITHIN THE EXCHANGES CURRENTLY )  
9 SERVED BY U S WEST. )

DOCKET NO. U-2752-95-363

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF HEARING: July 19, 1996

11 PLACE OF HEARING: Phoenix, Arizona

12 PRESIDING OFFICER: Scott S. Wakefield

13 APPEARANCES: Mr. Morton J. Posner, SWIDLER & BERLIN CHTD., on  
14 behalf of MFS Intelenet of Arizona, Inc.;

15 Mr. Gary L. Lane, Corporate Counsel, on behalf of U S WEST  
COMMUNICATIONS, INC.; and

16 Ms. Janet Wagner and Ms. Karen Nally, Staff Attorneys, Legal  
17 Division, on behalf of the Utilities Division of the Arizona  
Corporation Commission.

18 **BY THE COMMISSION:**

19 **FINDINGS OF FACT**

20 1. MFS Intelenet of Arizona, Inc. ("MFSI-AZ" or "Applicant") is a Delaware corporation  
21 authorized to do business in Arizona.

22 2. On August 14, 1995, MFSI-AZ filed with the Arizona Corporation Commission  
23 ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate" or  
24 "CC&N") to provide intrastate competitive telecommunications services, including local exchange  
25 ("LEC") services and intraLATA toll services in the exchanges currently served by U S West  
26 Communications, Inc. ("U S West") in Arizona ("Application"). In its Application, MFSI-AZ requested  
27 that the services it intends to provide be considered "competitive" pursuant to A.A.C. R14-2-1108.

28 3. On August 31, 1995, U S West filed a request to intervene in this matter which was

1 approved on September 17, 1995.

2 4. On September 27, 1995, Applicant had notice of its Application published in a newspaper  
3 of general circulation in the State of Arizona.

4 5. On June 25, 1996, the Commission's Utilities Division Staff ("Staff") filed its Staff  
5 Report, which recommended approval of the Application as well as a number of additional  
6 recommendations.

7 6. On June 27, 1996, the Commission issued a Procedural Order setting the hearing for July  
8 19, 1996.

9 7. The hearing was held as scheduled and Applicant and Staff presented evidence.

10 8. MFSI-AZ is wholly owned by MFS Communications Company, Inc. ("MFSCC"), which  
11 recently issued senior discount notes to raise approximately \$600 million and made a stock offering to  
12 raise \$1.28 billion.

13 9. MFSCC operates, through its subsidiaries, telecommunications networks in twenty-six  
14 major metropolitan areas, including Phoenix. In four of the twenty-three states where MFSCC provides  
15 services, it provides facilities-based local exchange service.

16 10. MFSCC, through a subsidiary, is currently providing interstate private line and non-  
17 switched access services to several large business customers in the Phoenix area.

18 11. Currently, an affiliate of MFSI-AZ owns a 10 mile fiber optic ring in the downtown  
19 Phoenix area.

20 12. Applicant has the technical capability to provide the services it proposed in its  
21 Application.

22 13. Applicant has the financial resources to provide the services it proposed in its Application.

23 14. U S West is currently the only provider of LEC services in the service territory requested  
24 by MFSI-AZ.

25 15. MFSI-AZ will compete with U S West, AT&T Communications of the Mountain States,  
26 Inc., MCI Telecommunications Corporation and Sprint Communications Company in the provision of  
27 intraLATA toll services.

28 16. Applicant is in the process of negotiating an interconnection agreement with U S West.

17. Applicant did not file a tariff with its Application pursuant to A.A.C. R14-2-1104(A)(3) pending the outcome of its negotiations with U S West for an interconnection agreement.

18. In addition to recommending approval of the Application, Staff recommended that:

- (a) Applicant's request for a waiver from the A.A.C. Rule R14-2-1104(A)(3) requirement to file a tariff with this Application be approved;
- (b) MFSI-AZ be required to file, thirty days in advance of providing service, proposed rates for Staff review and approval;
- (c) MFSI-AZ attempt to negotiate interim interconnection and Directory Assistance arrangements with the companies with which it must interconnect, pursuant to the provisions of A.A.C. Rule R14-2-1112;
- (d) MFSI-AZ pursue contractual number portability arrangements with other LECs until such time as interim and/or permanent number portability are established by rule;
- (e) MFSI-AZ agree to provide basic service as eventually defined and abide by and participate in the AUSF mechanism;
- (f) MFSI-AZ abide by the quality of service standards which were approved by the Commission for U S West in Docket No. E-1051-93-183;
- (g) in areas where MFSI-AZ is the sole provider of local exchange service facilities, MFSI-AZ provide customers with access to alternative providers of service pursuant to the provisions of A.A.C. Rule R14-2-1112 and any subsequent rules adopted by the Commission on interconnection and unbundling;
- (h) MFSI-AZ be required to certify that all issues associated with the provision of 911 service have been resolved with the emergency service providers and that its 911 system is operating and meets the requirements of emergency service providers before it begins to provide service; and
- (i) MFSI-AZ's LEC and intraLATA toll services be classified as competitive.

19. Because Applicant did not file an initial tariff with its Application, Staff had not had an opportunity to conduct a review pursuant to A.A.C. R14-2-1105(C) and R14-2-1104(D).

20. Staff's recommendations, as set forth in Finding of Fact No. 18, are reasonable.

### CONCLUSIONS OF LAW

1. MFSI-AZ will be a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Applicant and of the subject matter of the Application.

1           3.     Notice of the Application was given in accordance with the law.

2           4.     A.A.C. R14-2-1105 allows a telecommunications company to file an application for a  
3 CC&N to provide competitive telecommunications services.

4           5.     Pursuant to Article XV of the Arizona Constitution as well as the Competitive  
5 Telecommunication Service Rules, A.A.C. R14-2-1101 et seq. ("Competitive Rules"), it is in the public  
6 interest for Applicant to provide the telecommunications services set forth in its Application.

7           6.     Applicant is a fit and proper entity to receive a Certificate authorizing it to provide LEC  
8 and intraLATA toll services within the exchanges currently served by U S West.

9           7.     Pursuant to A.A.C. R14-2-1108, the LEC and intraLATA toll services which Applicant  
10 intends to provide are competitive within the exchanges currently served by U S West.

11          8.     Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it  
12 is just and reasonable and in the public interest for Applicant to establish rates and charges which are not  
13 less than the Applicant's total service long-run incremental costs of providing the competitive services  
14 approved herein.

15          9.     Staff's recommendations, as set forth in Finding of Fact No. 18, are reasonable and should  
16 be adopted.

17                               **ORDER**

18           IT IS THEREFORE ORDERED that the Application of MFS Intelenet of Arizona, Inc. for a  
19 Certificate of Convenience and Necessity to provide local exchange and intraLATA services within the  
20 exchanges currently served by U S West Communications, Inc., be, and hereby is, granted.

21           IT IS FURTHER ORDERED that MFS Intelenet of Arizona, Inc.'s petition to determine that its  
22 local exchange and intraLATA toll services are competitive is hereby approved.

23           IT IS FURTHER ORDERED that MFS Intelenet of Arizona, Inc. is granted a waiver from A.A.C.  
24 Rule R14-2-1104(A)(3)'s requirement to file initial tariffs with the Application, provided that at least  
25 thirty days before providing service, MFS Intelenet of Arizona, Inc. shall file a tariff for the intrastate  
26 services approved herein, which sets forth maximum rates and charges as well as the current rates and  
27 charges which are not less than MFS Intelenet of Arizona, Inc.'s total service long-run incremental cost  
28 of providing the services.

IT IS FURTHER ORDERED that unless Staff files comments indicating that the rates and charges are unjust or unreasonable pursuant to A.A.C. Rule R14-2-1105(C) and R14-2-1104(D), the rates and charges authorized herein shall be effective thirty days after filing with the Commission, and remain effective until the Commission is notified in writing of a price change which is below the maximum tariffed rate which is consistent with the approval granted herein.

IT IS FURTHER ORDERED that MFS Intelenet of Arizona, Inc. shall notify the Arizona Corporation Commission within fifteen (15) days after it begins serving its first customer.

IT IS FURTHER ORDERED that MFS Intelenet of Arizona, Inc shall comply with Staff's recommendations as set forth in Finding of Fact No. 18 (c), (d), (e), (f), (g) and (h).

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

JAMES MATTHEWS  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_  
SSW:dap

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